

AMENDED IN SENATE APRIL 7, 1997

**SENATE BILL**

**No. 940**

**Introduced by Senator Leslie**

February 27, 1997

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An act to amend Section 136.1 of, *and to add Section 186.29 to*, the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

SB 940, as amended, Leslie. Crimes: intimidation of witnesses and victims.

(1) Existing law makes it a misdemeanor for any person to knowingly and maliciously prevent or dissuade or knowingly and maliciously attempt to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law. ~~Existing law also provides that if any of these acts or attempts are done under any one or more specified circumstances, the act or attempt is a felony punishable by imprisonment in the state prison for 2, 3, or 4 years.~~

This bill ~~instead would further provide that it is~~ *make these offenses punishable as either a misdemeanor or a felony punishable by imprisonment in the state prison for an unspecified term of years where the act is committed by a person who actively participates in a criminal street gang or engages in a pattern of criminal gang activity, as defined. By increasing the penalties for an existing crime, this bill would impose a state-mandated local program.*

(2) *Existing law, added by initiative statutes, specifies the punishment for persons who are convicted of a felony who*

have one or more prior convictions of a felony. The initiative statutes provide that any amendment of these provisions requires a  $\frac{2}{3}$  vote of the membership of each house of the Legislature.

This bill would provide that a conviction for a felony violation of any of the offenses described in (1) above shall constitute a prior conviction of a felony for purposes of those initiative statutes. Because this bill would constitute an amendment of those initiative statutes, the bill would require a  $\frac{2}{3}$  vote.

(3) Existing law also provides that if any of the offenses described in (1) above are done under any one or more specified circumstances, the offense is a felony punishable by imprisonment in the state prison for 2, 3, or 4 years.

This bill would provide that any member of a criminal street gang who feloniously prevents or dissuades, or attempts to prevent or dissuade, a witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law shall be punished by an additional term of imprisonment in the state prison of 4, 6, or 8 years. This bill would further provide that if the offense is accompanied by a credible threat to commit a violent felony, the credible threat shall constitute an aggravating factor in the commission of the offense, and that if the offense is accompanied by a credible threat to kill the victim or witness threatened, or a 3rd person, the gang member shall be punished by an additional term of imprisonment in the state prison of 10 years to life. By ~~expanding the scope of~~ increasing the penalties for an existing crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: ~~majority~~  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Section 136.1 of the Penal Code is amended to read:

136.1. (a) Except as provided in subdivision (c), any person who does any of the following is guilty of a ~~misdemeanor~~ *public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:*

(1) Knowingly and maliciously prevents or dissuades any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(2) Knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.

(b) Except as provided in subdivision (c), every person who attempts to prevent or dissuade another person who has been the victim of a crime or who is witness to a crime from doing any of the following is guilty of a ~~misdemeanor~~ *public offense and shall be punished by imprisonment in a county jail for not more than one year or in the state prison:*

(1) Making any report of that victimization to any peace officer or state or local law enforcement officer or probation or parole or correctional officer or prosecuting agency or to any judge.

(2) Causing a complaint, indictment, information, probation or parole violation to be sought and prosecuted, and assisting in the prosecution thereof.

(3) Arresting or causing or seeking the arrest of any person in connection with that victimization.

(c) Every person doing any of the acts described in subdivision (a) or (b) knowingly and maliciously under any one or more of the following circumstances, is guilty of a felony punishable by imprisonment in the state prison for two, three, or four years under any of the following circumstances:

(1) Where the act is accompanied by force or by an express or implied threat of force or violence, upon a

1 witness or victim or any third person or the property of  
2 any victim, witness, or any third person.

3 (2) Where the act is in furtherance of a conspiracy.

4 (3) Where the act is committed by any person who has  
5 been convicted of any violation of this section, any  
6 predecessor law hereto or any federal statute or statute  
7 of any other state which, if the act prosecuted was  
8 committed in this state, would be a violation of this  
9 section.

10 (4) Where the act is committed by any person for  
11 pecuniary gain or for any other consideration acting upon  
12 the request of any other person. All parties to such a  
13 transaction are guilty of a felony.

14 ~~(d) Every person doing any of the acts described in~~  
15 ~~subdivision (a) or (b) knowingly and maliciously, where~~  
16 ~~the act is committed by a person who actively participates~~  
17 ~~in a criminal street gang or engages in a pattern of~~  
18 ~~criminal gang activity, as defined in Section 186.22, is~~  
19 ~~guilty of a felony punishable by imprisonment in the state~~  
20 ~~prison for \_\_\_\_\_, \_\_\_\_\_, or \_\_\_\_\_ years.~~

21 ~~(e)~~

22 (d) Every person attempting the commission of any  
23 act described in subdivisions (a), (b), and (c) is guilty of  
24 the offense attempted without regard to success or failure  
25 of the attempt. The fact that no person was injured  
26 physically, or in fact intimidated, shall be no defense  
27 against any prosecution under this section.

28 ~~(f)~~

29 (e) Nothing in this section precludes the imposition of  
30 an enhancement for great bodily injury where the injury  
31 inflicted is significant or substantial.

32 ~~(g)~~

33 (f) The use of force during the commission of any  
34 offense described in subdivision (c) shall be considered  
35 a circumstance in aggravation of the crime in imposing a  
36 term of imprisonment under subdivision (b) of Section  
37 1170.

38 (g) *A conviction for a felony violation of this section*  
39 *shall constitute a prior conviction of a felony for purposes*  
40 *of Sections 667 and 1170.12.*

1 SEC. 2. Section 186.29 is added to the Penal Code, to  
2 read:

3 186.29. (a) Notwithstanding and in lieu of the  
4 enhancements specified in subdivision (b) of Section  
5 186.22, the penalties specified in this section shall apply  
6 whenever a member of a criminal street gang, as defined  
7 in subdivision (f) of Section 186.22, is convicted of one of  
8 the offenses enumerated in this section.

9 (b) (1) Any member of a criminal street gang who  
10 feloniously prevents or dissuades, or attempts to prevent  
11 or dissuade, a witness or victim from attending or giving  
12 testimony at any trial, proceeding, or inquiry authorized  
13 by law, in violation of Section 136.1, shall, upon conviction  
14 of that felony, in addition and consecutive to the  
15 punishment prescribed for the felony or attempted  
16 felony of which he or she has been convicted, be punished  
17 by an additional term of imprisonment in the state prison  
18 of four, six, or eight years.

19 (2) If the offense described in paragraph (1) is  
20 accompanied by a credible threat to commit a violent  
21 felony, as described in subdivision (c) of Section 667.5, the  
22 credible threat shall constitute an aggravating factor in  
23 the commission of the offense.

24 (3) If the offense described in paragraph (1) is  
25 accompanied by a credible threat to kill the victim or  
26 witness threatened, or a third person, the gang member  
27 shall, upon conviction of that felony, in addition and  
28 consecutive to the punishment prescribed for the felony  
29 or attempted felony of which he or she has been  
30 convicted, be punished by an additional term of  
31 imprisonment in the state prison of 10 years to life.

32 (c) Notwithstanding any other provision of law, any  
33 person who is convicted under this section shall accrue no  
34 more than 15 percent worktime credit, as defined in  
35 Section 2933. Furthermore, in the event the offender  
36 receives an indeterminate sentence pursuant to  
37 paragraph (3) of subdivision (b), in no case shall the  
38 minimum term of 10 years be reduced by worktime  
39 credit.

1 (d) Nothing in this section shall be construed to limit  
2 prosecution under any other provision of law or to  
3 prevent the imposition of any applicable sentencing  
4 enhancements, except those specified in subdivision (b)  
5 of Section 186.22.

6 (e) For the purposes of this section, the following  
7 terms have the following meanings:

8 (1) “Credible threat” means a threat made with the  
9 intent and the apparent ability to carry out the threat so  
10 as to cause the target of the threat to reasonably fear for  
11 his or her safety or the safety of a third person.

12 (2) “Criminal street gang” has the same meaning as  
13 that specified in subdivision (f) of Section 186.22.

14 (3) “Member of a criminal street gang” means a  
15 person who commits, or has committed, a felony,  
16 including any of the offenses enumerated in subdivision  
17 (b), for the benefit of, at the direction of, or in association  
18 with, any criminal street gang, with the specific intent to  
19 promote, further, or assist in any criminal conduct by the  
20 criminal street gang.

21 ~~SEC. 2.~~

22 SEC. 3. No reimbursement is required by this act  
23 pursuant to Section 6 of Article XIII B of the California  
24 Constitution because the only costs that may be incurred  
25 by a local agency or school district will be incurred  
26 because this act creates a new crime or infraction,  
27 eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section  
29 17556 of the Government Code, or changes the definition  
30 of a crime within the meaning of Section 6 of Article  
31 XIII B of the California Constitution.

32 Notwithstanding Section 17580 of the Government  
33 Code, unless otherwise specified, the provisions of this act  
34 shall become operative on the same date that the act  
35 takes effect pursuant to the California Constitution.